

REMARKS

Claim Status

Claims 1-24 are all the claims pending in the application. By this Amendment, Applicants are amending claims 1-20 and 22, and adding new claims 25-31.

Interview

Applicants thank the Examiner for the interview conducted on December 2, 2009.

Applicants are submitting concurrently herewith a Statement of Substance of Interview. Additionally, the undersigned will be contacting the Examiner to schedule an in-person interview.

Petition for Extension of Time

A petition for extension of time for three months is being filed concurrently herewith.

Declaration

A declaration as discussed during the interview will be forthcoming.

Double Patenting

Claims 1-24 are provisionally rejected on the ground of nonstatutory double patenting over claims 1-40 copending Application No. 10/564,748.

Since this is a provisional double-patenting rejection, Applicants are deferring to address this rejection at this time.

Claims 1-24 are provisionally rejected on the ground of nonstatutory double patenting over claims 1-19 of copending Application No. 10/524,507.

Since this is a provisional double-patenting rejection, Applicants are deferring to address this rejection at this time.

Specification

The disclosure is objected to under 37 C.F.R. § 1.71, as allegedly being so incomprehensible as to preclude a reasonable search of the prior art by the Examiner. Applicants respectfully disagree. The Examiner's alleged reasons for the specification being incomprehensible are listed below in bold headings, and the Applicants corresponding responses are listed below each heading. The Embodiments discussed below are by way of example and are not limiting as to the scope of the invention.

(1) "what is structure or material of adaptation means or a peg 134 required in order to be movable . . . or slidable to accurately predetermine distance during assembly of the dispensing device" (Office Action at page 3, emphasis added.)

The specification is clear regarding an exemplary embodiment of the structure of an adaptation means that is movable or slidable. The specification states:

[T]he invention provides for adaptation means that are movable and/or deformable, placed between the transmission element 34 and the part 54. Advantageously, these adaptation means take the form of an adjustable peg 134 attached to the transmission element 34. Advantageously, this peg 134 can slide in said transmission element 34, and the force necessary to bring about this movement (and/or corresponding deformation) is greater than the force applied during the actuation of the device in order to dispense the product and to actuate the indicator A.

(Original specification, page 12, lines 4-14.)

In view of this disclosure, one of ordinary skill in the art would understand that one example of the movable or slidable adaptation means is a peg that is fit into a hole or other opening in the transmission element 34. Therefore, if a sufficient force were applied on the peg to overcome the fit of the peg, the peg would slide in the transmission element. Furthermore, Figure 4 of the present application (reproduced on the following page) shows an example of a peg 34 that is fit into the transmission element 34.

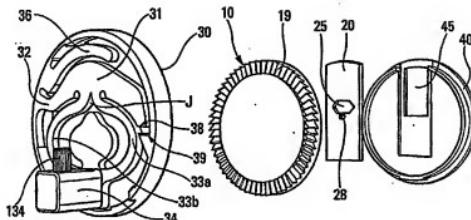


Fig. 4

(2) "what is structure or material of adaptation means or a peg 134 required in order to be . . . *deformable* . . . to accurately predetermine distance during assembly of the dispensing device;" (Office Action at page 3, emphasis added.)

An example of a deformable adaptation means also would have been understood by one of ordinary skill in the art in view of the disclosure of the present application. The present application states:

[T]he invention provides for adaptation means that are movable and/or deformable, placed between the transmission element 34 and the part 54. Advantageously, these adaptation means take the form of an adjustable peg 134 attached to the transmission element 34. Advantageously, this peg 134 can slide in said transmission element 34, and the force necessary to bring about this movement (and/or corresponding deformation) is greater than the force applied during the actuation of the device in order to dispense the product and to actuate the indicator A.

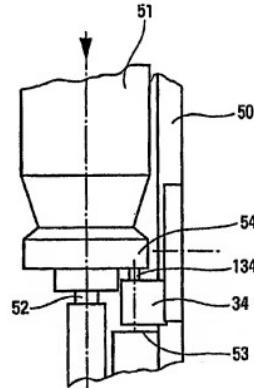
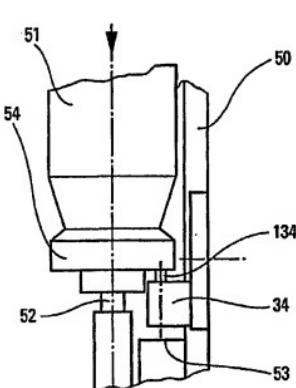
(Original specification, page 12, lines 4-14.)

One of ordinary skill in the art would understand that an example of the adaptation means could also be made of any material that is plastically deformable so as to change its shape under a certain load during assembly and maintain that changed shape when the load is removed. In the example given in the specification, the load that is required to deform the adaptation means is

greater than the load that is applied on the adaptation means during normal actuation of the dispenser device. Depending on the particular design of the dispenser device, one of ordinary skill having the knowledge of properties for various known materials would be able to select a material with suitable material properties to achieve the claimed features.

(3) "how [the adaptation means are] able to perform function of adjusting a distance between the movable part and the transmission element;" (Office action at pages 3-4.)

The specification describes in detail in a step-by-step process (shown in FIGS. 5-8) an example of how the adaptation means perform the function of adjusting a distance between the movable part and the transmission element during assembly. Figure 5 of the present application, reproduced below, shows an example of the beginning of the assembly process before the adaptation means 134 has been moved or deformed. (See original specification, page 12, line 23; FIG. 5.)



When the reservoir 51 is first pushed down, the movable part 54 of the reservoir 51 contacts the adaptation means 134 located in or on the transmission element 34. (See FIG. 6 above.) Since nothing prevents the movement of the transmission element 34, the force that reacts on the adaptation means 134 is less than a force that would cause the adaptation means 134 to move relative to the transmission element 34 or less than a force that would cause the adaptation means to deform. (See original specification, page 12, lines 27-29.) Therefore, the adaptation means 134 and the transmission element 34 move together until the bottom of the transmission element 34 contacts a stop 53, as shown in Figure 7 below. (See also original specification, page 12, lines 30-31.)

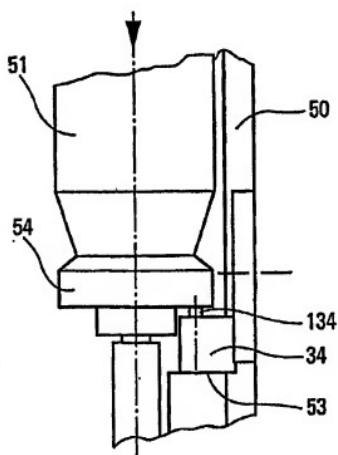


Fig. 7

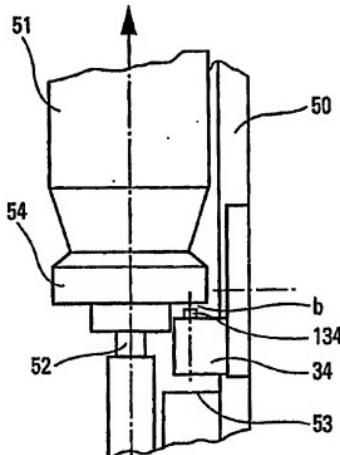


Fig. 8

As the reservoir 51 continues to be depressed, the stop 53 causes a greater force to react on the adaptation means 134, thereby causing the adaptation means 134 to move or deform relative to the transmission element 34. (*See* original specification, page 12, line 32 to page 13, line 2.) The adaptation means 134 moves or is deformed relative to the transmission element 34 until the valve element 52 is at the end of its actuating stroke and the movable part 54 is at its maximum displacement. Upon subsequent actuations of the dispenser device, the adaptation means 134 can not be moved or deformed because the adaptation means has already been deformed to the maximum displacement of the moving part 54 of the reservoir. Accordingly, the adaptation means adjusts the distance between the transmission element 34 and the moving part 54 of the reservoir 51 during assembly, but not during subsequent actuations.

(4) "What is the connection of the linearly movable member 20 with the ring 10 and the cover 40 to achieve it function of linearly moving." (Office Action at page 4.)

The connection of the linearly movable member 20 with the ring 10 and the cover 40 is clearly shown in the figures and described in the written description with respect to an exemplary embodiment. The original specification states:

The indicator A can also advantageously include a linearly movable member 20, suitable to move in linear motion or translation. This linearly movable member 20 includes a projection 28, or any other equivalent means, which cooperates with the said hollow profile 18 of the rotary disk 10. This linearly movable member 20 is preferably made in the form of a thin plate and includes a viewing opening 25 intended to open on to the indicating means 15 of the rotary disk 10.

Depending on the shape of the hollow profile 18, a rotation of the counting wheel 10 can result in a linear motion of the linearly movable member 20.

(Office Action at page 9, lines 18-32.)

Further, as shown in the exemplary embodiments in figures 3 and 4 below, one can clearly see how the linearly movable member 20 fits into the similarly shape slot in the cover member 40. Furthermore, the projection 28 engages the hollow profile 18 of the rotary disk 10. The rotation of the rotary disk 10 causes the linearly movable member 20 to be moved linearly up and down as the projection 18 follows the contours of the spiral hollow profile 18.

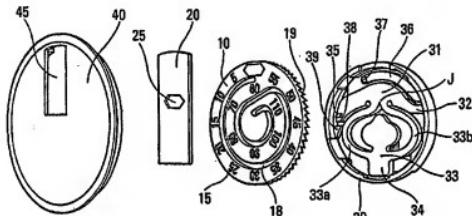


Fig. 3

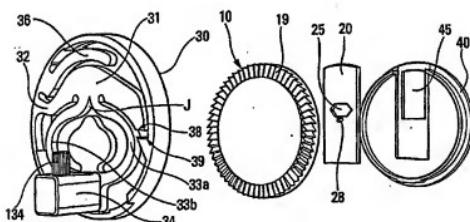


Fig. 4

Claim Rejections under 35 U.S.C. § 112, first paragraph

Claims 1-24 are rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the enablement requirement. Applicants disagree.

The test for enablement is whether one skilled in the art could make and use the claimed invention without undue experimentation. See *Mineral Separation v. Hyde*, 242 U.S. 261, 270 (1916); *In re Wands*, 858 F.2d 731, 737(Fed. Cir. 1988) (emphasis added). Thus, “*[a] patent need not teach, and preferably omits, what is well known in the art.*” MPEP § 2164.01 (citing *In re Buchner*, 929 F.2d 660, 661 (Fed. Cir. 1991); *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1384 (Fed. Cir. 1986)) (emphasis added). It is not necessary to “enable one of ordinary skill in the art to make and use a perfected, commercially viable embodiment absent a claim to that effect.” MPEP § 2164 (citing *CFMT, Inc. v. Yildup Int'l Corp.*, 349 F.3d 1333 (Fed. Cir. 2003)). As such, “[d]etailed procedures for making and using the invention may not be necessary if the description of the invention itself is sufficient to permit *those skilled in the art* to make and use the invention.” MPEP § 2164 (emphasis added). In fact,

[i]n examining a patent application, the PTO is required to assume that the specification complies with the enablement provision of Section 112 unless it has ‘acceptable evidence or reasoning’ to suggest otherwise. . . . The PTO thus must provide reasons supported by the record as a whole why the specification is not enabling. . . . Then and only then does the burden shift to the applicant to show that one of ordinary skill in the art could have practiced the claimed invention without undue experimentation. . . .”

Gould v. Mossinghoff, 229 USPQ 1, 13-14 (D.D.C. 1985) (citations omitted), aff'd in part, vacated in part on other grounds, and remanded sub nom. *Gould v. Quigg*, 3 USPQ2d 1302 (Fed. Cir. 1987) (emphasis added); see also MPEP 2164.04.

The Examiner's alleged reasons for non-enablement are listed below in bold headings, and the Applicants corresponding responses are listed below each heading. The embodiments discussed below are exemplary and non-limiting on the claimed invention.

(1) "In claim 1, the specification does not describe how adaptation means can be movable . . . to accurately predetermine distance during assembly of the dispensing device;" (Office Action, page 4.)

Amended claim 1 recites: "said adaptation device (134) being movable, during assembly of the dispensing device (B), thereby setting a distance at rest between said transmission element (34) and said moving part (54) to a predetermined distance when the dispensing device is in a rest position."

One of ordinary skill would be able to make and use an adaptation device that is movable relative to the transmission element in view of the specification and without undue experimentation. The present application states with respect to an exemplary embodiment:

[T]he invention provides for adaptation means that are movable and/or deformable, placed between the transmission element 34 and the part 54. Advantageously, these adaptation means take the form of an adjustable peg 134 attached to the transmission element 34. Advantageously, this peg 134 can slide in said transmission element 34, and the force necessary to bring about this movement (and/or corresponding deformation) is greater than the force applied during the actuation of the device in order to dispense the product and to actuate the indicator A.

(Original specification, page 12, lines 4-14.)

The above portion of the specification states that there is (1) an adjustable peg 134 attached to the transmission element 34; (2) the adjustable peg 134 slides in the transmission element 34; (3) the adjustable peg 134 only slides when the force applied on the adjustable peg 134 is greater than the force applied during actuation of the device. One of ordinary skill would understand that an adjustable peg that slides in the transmission element only after a certain force is applied means that the peg is tightly fit into a hole or other opening in the transmission element. Again, Applicants note that a perfected embodiment need not be produced, and the test for enablement is whether one of ordinary skill could make and use the claimed invention

without undue experimentation. Here, one of ordinary skill would be able to make and use the claimed invention without undue experimentation.

(2) "In claim 1, the specification does not describe how adaptation means can be . . . deformable to accurately predetermine distance during assembly of the dispensing device;" (Office Action, page 4.)

The feature of the adaptation device being deformable has been removed from independent claim 1, and re-written in the newly added independent claim 26. Independent claim 26 recites "said adaptation device (134) being deformable, during assembly of the dispensing device (B), thereby setting a distance between said transmission element (34) and said moving part (54) to a predetermined distance when the dispensing device is in a rest position."

One of ordinary skill in the art would be able to make and use an adaptation device that is deformable. The present application states with respect to an exemplary embodiment:

[T]he invention provides for adaptation means that are movable and/or deformable, placed between the transmission element 34 and the part 54. Advantageously, these adaptation means take the form of an adjustable peg 134 attached to the transmission element 34. Advantageously, this peg 134 can slide in said transmission element 34, and the force necessary to bring about this movement (and/or corresponding deformation) is greater than the force applied during the actuation of the device in order to dispense the product and to actuate the indicator A.

(Original specification, page 12, lines 4-14.)

The above portion of the specification states that the adaptation device (1) is deformable, and (2) the adaptation device is only deformable when the force that is applied is greater than the force applied during actuation of the dispensing device. In view of this disclosure, one of ordinary skill in the art would understand that an example of the adaptation means could also be made of any material that is plastically deformable so as to change its shape under a certain load

during assembly and maintain that changed shape when the load is removed. In the example given in the specification, the load that is required to deform the adaptation means is greater than the load that is applied on the adaptation means during normal actuation of the dispenser device. Depending on the particular design of the dispenser device, one of ordinary skill having the knowledge of properties for various known materials would be able to select a material with suitable material properties to achieve the claimed features.

Therefore, one of ordinary skill would know how to make and use the claimed invention without undue experimentation.

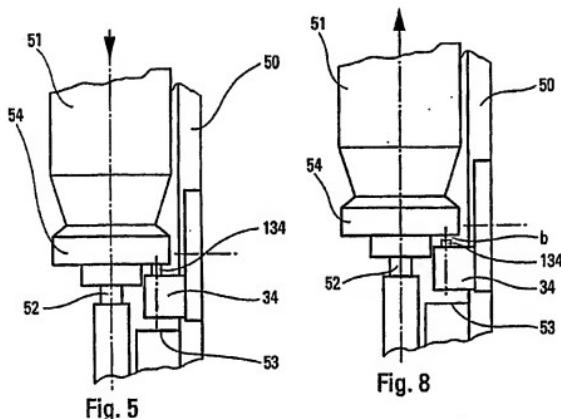
(3) “In claims 20 and 23, the specification does [sic] describe how adaptation means is able to perform function of adjusting a distance between the movable part and the transmission element during assembly to compensate for manufacturing tolerances of the movable part and the transmission element, and how the adaptation means can move to create a reduced distance, and the reduced distance does not change during actuation;” (Office Action at page 5.)

Regarding claim 20, the specification enables the claimed features of “wherein the adaptation means are for adjusting a distance between the movable part and the transmission element during assembly of the fluid product dispensing device to compensate for manufacturing tolerances of the movable part and the transmission element.” As discussed above, the specification describes an exemplary embodiment of the adaptation means that perform the function of adjusting the distance between the movable part and the transmission element during assembly. Accordingly, one would not have to engage in undue experimentation to produce these claimed features.

Regarding claim 23, Applicants note that claim 23 recites “wherein the movable part is configured to force the adaptation means to move relative to the transmission element such that a

reduced distance is created between a distal end of the adaptation means and the transmission element."

As shown in the exemplary embodiments in figures 5-8 of the present application, these embodiments show the distal end of the adaptation means 134 being moved downward or deformed such that the distance between the distal end of the adaptation means 134 and the transmission element 34 is reduced. (Compare figures 5 and 8 below.)



(4) "In claims 21 and 24, 'the adjustable peg is slidable' is not supported in the specification. The specification does not disclose how the adjustable peg can move to create a reduced distance, and the reduced distance does not change during actuation." (Office Action at page 5.)

Regarding claim 21, the specification enables one of ordinary skill in the art to make and use an adjustable peg that is slidable relative to the transmission element. As discussed above, one of ordinary skill in the art would understand in view of the specification that in one exemplary embodiment the adjustable peg is tightly fit into a hole or other opening in the

transmission element. Therefore, one would not have to engage in undue experimentation to produce this feature.

Regarding claim 24, the specification enables one to make and use a device “wherein the movable part is configured to force the adjustable peg to move relative to the transmission element such that a reduced distance is created between a distal end of the adjustable peg and the transmission element.”

Again, as shown in the exemplary embodiments in figures 5-8 of the present application, these embodiments show the distal end of the adaptation means 134 being moved downward or deformed such that the distance between the distal end of the adaptation means 134 and the transmission element 34 is reduced.

(5) “In claim 22, the specification does not describe how adaptation means can be permanently moved and/or deformed during the assembly and can not be moved and/or deformed during subsequent actuations.” (Office Action at page 5.)

As discussed above with respect to the objections to the specification, the specification clearly describes an exemplary embodiment in a step-by-step manner as to how the adaptation means is moved and/or deformed during the assembly process but not during subsequent actuations. Therefore, one would not have to engage in undue experimentation to make and use the claimed invention.

Rejections Under 35 U.S.C. § 112, second paragraph

Claims 1-24 are rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

The Examiner alleges that the claims are indefinite for the reasons listed on pages 5 and 6 of the Office Action. Applicants believe that the amendments to the claims fully address the Examiner's alleged indefinite issues. If there are any outstanding issues, Applicants kindly request the Examiner to contact the undersigned below to discuss by telephone.

New Claims

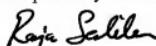
For additional claim coverage merited by the scope of the invention, Applicants are adding new claims 25-31. Claims 25 and 27-31 are allowable at least by virtue of their dependency from independent claims 1, 20, 21, or 26. Independent claim 26 is allowable for the reasons discussed above.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

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23373

CUSTOMER NUMBER

Date: February 25, 2010